THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 11th day of July, 2006

W.P.Nos.25442 of 2002 & 544, 2425, 2799 and 18163 of 2003

Between:

BHEL Anusandhan Vikas Employees
Mutually Aided Cooperative Housing
Society Limited, having its Registered
Office at Vikasnagar, Hyderabad-500 093,
Represented by its Secretary-P.Janardhan … Petitioner

and

Dr. K.N. Chowdary
and 2 others … Respondents

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W.P.Nos.25442 of 2002 & 544, 2425, 2799 and 18163 of 2003

COMMON ORDER:

The issue that arises for consideration in all these Writ Petitions is one and the same, may be there is little variation here and there, but the principle involved is same; therefore, all the Writ Petitions are being disposed of by this common Order.

W.P.Nos.25442 of 2002 & 544, 2425 and 2799 of 2003 have been filed by BHEL Anusandhan Vikas Employees Mutually Aided Cooperative Housing Society Limited, Hyderabad seeking to quash the Orders dated 2-11-2002 passed in O.P.Nos.2 to 5 of 2002 on the file of the Cooperative Tribunal, Hyderabad, while Writ Petition No.18163 of 2003 has been filed by a member of the said Society seeking a Mandamus to declare the Order dated 2-11-2002 passed in O.P.No.808 of 2002 on the file of the Cooperative Tribunal as arbitrary and illegal and to direct the 1st respondent to allot executive type 'A' category house to the petitioner.

Broadly speaking, learned counsel for the respondents has stated that in 1991, the provisions of A.P. Cooperative Societies Act were applicable; however, the Society was not registered under that Act. Initially, an *ad hoc* committee was there, which received applications in 1993 and 1995 and a Memorandum of Understanding between the BHEL Anusandhan Vikas Employees Mutually Aided Cooperative Housing Society and Management of BHEL was entered into. Applications were received against three types of quarters - 'A'

type for Executives, 'B' type for Supervisors and 'C' type for workmen. In 1999, under the A.P.Mutually Aided Cooperative Societies Act, the Society was registered. In all, 217 houses were proposed to be constructed i.e. 'A' type 48, 'B' type 37 and 'C' type 132. In fact, in 1993, 44 applications were received for 'A' type, 24 for 'B' type and 34 for 'C' type from the members, who paid initial payment. In 1995, there was overwhelming response and excess number of applicants have come forward, since the proposal had taken a concrete shape. In this background, the Bye-law No.34(3) read with Bye-law No.41 of the Society, the seniority within the category has to be fixed up and that the society has adopted unreasonable criteria. Further, when 40 persons committed default, another 40 persons were given option, but only 35 persons opted and 5 persons did not opt for and raised a dispute as to seniority etc. In fact, the Cooperative Tribunal passed an Order after counter was filed, as an interim measure, directing to reserve one house in each category for the purpose of allotment to respondent-members when the matter was carried to the Tribunal in O.P.Nos.1 to 5 of 2002, 808 of 2001 and 13 of 2002, which were disposed of by a common Order deciding the question proper. There is no scope for any interference to be made by this Court.

At this stage, it may be necessary to notice that earlier, a Writ Petition was filed by the Society i.e. W.P.No.1571 of 2003 against one of the said O.Ps i.e. O.P.No.1 of 2002, which was disposed of along with O.P.Nos.2,3,4,5 and 808 of 2001 and 13 of 2002 by a common Order by the Cooperative Tribunal on 2-11-2002, and this Court on 22-6-2006 disposed of the said Writ Petition holding as under:

> "From the above, it is clear that the Tribunal proceeded on the footing that the parties are governed by the bye-laws of the Society and bye-law No.41 deals with the cancellation of allotment, wherein it is clearly mentioned that any default in payment of instalments will carry interest at 18% per annum and only after issuance of notice and

in case the amount still remains unpaid, it would result in cancellation. That means, it does not have any affect on the seniority of a member. Either the plea of the petitioners or the plea of the 1st respondent was taken into consideration for the purpose of fixing up of seniority. On the other hand, the Tribunal felt that the payment of instalment need not be taken into consideration and the only criterion is the payment of interest at 18% per annum over the delayed payment or cancellation in default of payment and the delayed payments, if any, will not have any effect on the seniority. This seems to be not correct and the Tribunal has not examined Bye-law No.34(3) of the Society. The petitioners herein have categorically asserted that a formula has been evolved for implementation of the bye-laws for preparing the seniority list and the seniority list has been prepared as per the formula, which reads as under:

Payment of seniority order	Year/No.of instalments paid before cut-off dates
I	1993 / 12
II	1995 / 12 + 1993 / 11
III	1995 / 11 + 1993 / 10
IV	1995 / 10 + 1993 / 9
V	1995 / 9 + 1993 / 8 So on and so forth

This method adopted by the society is within the parameters of law. Bye-law No.34(3) of the Bye-laws of the Society, reads as under:

"34. PROCEDURE GOVERNING ALLOTMENT OF PLOTS/HOUSES TO MEMBERS:

(1) and (2)……

(3) When the total number of plots/houses is equal to the total number of applications from members, the plots/houses shall be allotted to each member. The Board of Directors shall prepare a seniority list of all the members, who have paid all instalments for development & construction charges as decided by the committee based on (1) Seniority of payment of instalments (2) Service in BHEL (R&D) (3) Service in BHEL and (4) Date of birth (5) Draw of lots where other conditions match. Mutual exchange of plots/houses between the members may be allowed by the Board.

(4) to (12)……"

As seen from the above, the bye-laws contemplate seniority of payment of instalments, service in BHEL (R&D), date of birth and by drawal of lots, where other conditions match for allotment of houses. It is not the case of the 1st respondent that this procedure was not followed. On the other hand, the petitioners herein categorically asserted that this method is followed, as noticed above and fixed the seniority. Therefore, the only conclusion that can be reached is that the procedure as to fixing of seniority as per Bye-law No.34(3) of the Bye-laws of the Society has been followed by the writ petitioners. The Tribunal simply examined Bye-law No.41 i.e. collecting interest at 18% per annum over and above due amount, for the delayed payment and nothing else, but the seniority cannot be decided on that factor. I am of the considered opinion that the Tribunal has not considered the issues involved in the case properly and proceeded on the footing that the seniority method adopted by the Society is not permissible under the law, without examining Bye-law No.34(3).

Further, at paragraph-48 of its Order, the Tribunal noticed that no allotment had been made by the date of filing of the petition before it. May be, that is true. But, as on the date of passing of the Order, all the members of the society were allotted with the houses, which they are entitled to as per their eligibility i.e. A,B and C categories, and they have occupied the houses and living therein. Even the 1st respondent was allotted with 'B' type house as per his eligibility. Even if the seniority is fixed properly, probably he was entitled for choosing a house of his choice in 'B' category itself. In view of the fact that the Tribunal has not properly considered the matter, I am satisfied that the Society has properly considered the seniority criterion as per Bye-law No.34(3). Now, even according to the 1st respondent, he has already been allotted with 'B' type house for which he is entitled to. Therefore, at this stage, if any order is passed directing to prepare the seniority list afresh, it would amount to opening of pandora's box and disturbing the occupancy of all the members, who were allotted with 'B' type houses. In the interest of justice and in the welfare of the members of the society, the impugned Order is liable to be set aside and is accordingly set aside. However, the allotment made in favour of the 1st respondent shall not be disturbed."

Of course, in these Writ Petitions, the learned counsel projected a little different angle in considering the seniority between the members of the society for allotment of houses in each category. There is no necessity of going into all the details, for the reason that the Order passed in O.P.No.1 of 2002 was set aside and the matter has been remanded for reconsideration in W.P.No.1571 of 2003. Therefore, in these Writ Petitions also, the impugned Orders are liable to be set aside and the matters are liable to be remanded to the Cooperative Tribunal for reconsideration, as per law, after hearing all the parties concerned and after written submissions are made by all the parties in this regard.

These Writ Petitions are allowed to the extent indicated above and the matters are remanded to the Tribunal for reconsideration, as stated supra. No order as to costs.

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11-7-2006

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